

## REMARKS/ARGUMENTS

Claims 1-17 are pending in the application. Claims 1-4 and 16 stand rejected as anticipated by Delmege (U.S. 4,679,950); claims 1-3 also stand rejected as anticipated by Hiers (U.S. 2,928,696); and the Examiner considers that claims 5-15 and 17 would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims.

### *Claim Amendments*

The amendment of independent claim 1 includes all of the limitations of independent claim 1 and claims 2-5 depending on claim 1 except the operating element being disposed “in a front area of the drawer” and adds the further limitation that the lifting and lowering element of the lifting and lowering device is disposed in a rear area of the drawer on a side wall lower component of the drawer. The amendment of independent claim 16 includes all of the limitations of independent claim 16 and claim 17 depending on claim 16 except the slider extending “from a front area of the drawer” being held moveable “in the front drawer rail” and adds the further limitation that the slider is held movable within the back area of the drawer rail.

New claim 18 proposes a panel adjustment device for a front panel of a drawer supported in a cabinet by a drawer rail system that includes, for example, at least one drawer rail of the drawer rail system supporting the drawer with the front panel attached to the drawer, at least one cabinet rail of the drawer rail system mounted to the cabinet and supporting the drawer rail, and a lifting and lowering device located between the drawer and the drawer rail, the lifting and lowering device having a lifting and lowering element that is moveable between predetermined first and second positions of the lifting and lowering element relative to the drawer.

New claim 18 further proposes that the lifting and lowering device also has a swiveling axis disposed between the front panel of the drawer and the lifting and lowering element, the swiveling axis being spaced from the lifting and lowering element by a distance that is at least as great as a distance between the swiveling axis and the front

panel of the drawer, and the lifting and lowering element urges the drawer with the front panel attached to the drawer to swivel relative to the drawer rail about the swiveling axis in response to movement of the lifting and lowering element between the predetermined first and second positions of the lifting and lowering element relative to the drawer.

Claims 2-5 and 17 are canceled and claims 6-9, 11, 12, and 14 are amended to address editorial issues.

Support for the foregoing amendment is found throughout the specification and in the claims. Accordingly, no new matter has been added.

***Claim Rejections - 35 U.S.C. § 102***

Claims 1-4 and 16 stand rejected as unpatentable over Delmege under 35 U.S.C. § 102(b), and claims 1-3 stand rejected as unpatentable over Hiers under 35 U.S.C. § 102(b). The rejection is traversed and reconsideration is requested.

As a preliminary matter, the Examiner's refusal to give any patentable weight to the limitation of claim 1 of "the lifting and lowering element being operable to urge the drawer with the front panel attached to the drawer to swivel relative to the drawer rail about the swiveling axis resulting in a corresponding change in the enclosed inclination angle defined between the front panel of the drawer and the front side of the drawer opening" in rejecting claim 1 because it is functional is traversed. Likewise, the Examiner's refusal to give any patentable weight to the limitation of claim 16 of "the lifting and lowering element being operable to urge the drawer with the front panel attached to the drawer to swivel relative to the drawer rail around the swiveling axis" because it is functional is traversed.

There is simply no such rule as claimed by the Examiner that functional statements are not given any patentable weight. On the contrary, the foregoing statements that the lifting and lowering element is "operable to urge the drawer with the front panel attached to swivel relative to the drawer rail about the swiveling axis resulting in a corresponding change in the enclosed inclination angle defined between the front panel of

the drawer and the front side of the drawer opening", as recited in claim 1, and that the lifting and lowering element is "operable to urge the drawer with the front panel attached to swivel relative to the drawer rail around the swiveling axis", as recited in claim 16, alleged by the Examiner to be functional and *per se* of no patentable weight are of such nature as to fairly limit the claimed structure in such a manner as to distinguish from the references cited by the Examiner. See, e.g., K-2 Corp. v. Salomon S.A., 191 F.3d 1356, 1363, 52 USPQ2d 1001, 1004 (Fed. Cir. 1999) ("The functional language is, of course, an additional limitation in the claim.").

Nevertheless, the foregoing amendment cancelling claims 2-4 renders the rejection of those claims moot, and the amendment of independent claim 1 to include the limitations of claims 1-5 except the operating element being disposed "in a front area of the drawer" and adding the further limitation that the lifting and lowering element of the lifting and lowering device is disposed in a rear area of the drawer on a side wall lower component of the drawer, and the amendment of independent claim 16 to include the limitations of 16 and 17 except the slider extending "from a front area of the drawer" being held moveable "in the front drawer rail" and adds the further limitation that the slider is held movable within the back area of the drawer rail, believed likewise to render the rejection of claims 1 and 16 moot.

In the rejection, the Examiner considered that Delmege teaches all the limitations of claims 1-4 and all the limitations of claim 16. Specifically, the Examiner considered that Delmage et al. teaches "an operating element (33) for the lifting and lowering element disposed in a front area of the drawer" and "a connection element (29) connecting the lifting and lowering element in the rear area of the drawer with the operating element in the front area of the drawer", as recited in cancelled claim 4, and likewise that Delmage et al teaches "the slider is formed out of a flat material (best seen in Delmege et al., Figure 2) which extends from a front area of the drawer rail" and which "is held movable in the front area of the drawer rail", as recited in cancelled claim 16. See, e.g., Office Action mailed May 18, 2006, page 4.

In the statement of allowable subject matter, the Examiner presumably considered that Delmage does not teach the limitations of claim 5, which the Examiner considered to be allowable if amended to independent form to include the limitations of claims 1-4 and likewise presumably considered that Delmage does not teach the limitations of claim 17, which the Examiner likewise considered to be allowable if rewritten in independent form to include the limitations of claim 16.

The foregoing amendment of independent claim 1 includes all of the limitations of independent claim 1 and claims 2-5 depending on claim 1 except the operating element being disposed “in a front area of the drawer” and adds the further limitation that the lifting and lowering element of the lifting and lowering device is disposed in a rear area of the drawer on a side wall lower component of the drawer, and the foregoing amendment of independent claim 16 includes all of the limitations of independent claim 16 and claim 17 depending on claim 16 except the slider extending “from a front area of the drawer” being held moveable “in the front drawer rail” and adds the further limitation that the slider is held movable within the back area of the drawer rail. The location of the operating element or slider in a front area of the drawer is neither essential to nor in any way significant in distinguishing Applicant’s claimed panel adjustment device as recited in amended independent claim 1 or as recited in amended independent claim 16 from Delmege.

Regarding new independent claim 18, neither Delmege nor Hiers teach or suggest a panel adjustment device for a front panel of a drawer supported in a cabinet by a drawer rail system as recited in claim 18 in at least the following respects:

Regarding Delmege:

- Instead of a panel adjustment device, as recited in claim 18, Delmege discloses a drawer locking mechanism.

- Instead of the lifting and lowering device located between the drawer and the drawer rail, as recited in claim 18, Delmege discloses the drawer locking mechanism located between the drawer rail and the cabinet rail
- Instead of the lifting and lowering device having a lifting and lowering element that is moveable between predetermined first and second positions of the lifting and lowering element relative to the drawer and a swiveling axis disposed between the front panel of the drawer and the lifting and lowering element that is spaced from the lifting and lowering element by a distance that is at least as great as a distance between the swiveling axis and the front panel of the drawer, as recited in claim 18, the cam 39 of Delmege characterized by the examiner as a lifting and lowering device simply pivots on its own pivot axis (i.e. screw 41) to push the ball bearing cages apart. There is absolutely no swivel axis in Delmage except cam 39 that can do nothing but swivel on its own axis to push the ball bearing cages apart. The examiner's rendition of Fig. 2 of Delmege with a arrow purporting to show swiveling of the slide 29 is patently wrong and physically impossible as the slide can only move lengthwise along slotted holes 34.
- Instead of the lifting and lowering element urging the drawer with the front panel attached to the drawer to swivel relative to the drawer rail about the swiveling axis in response to movement of the lifting and lowering element between predetermined first and second positions of the lifting and lowering element relative to the drawer, as recited in claim 18, the cam 39 of Delmege mischaracterized by the Examiner as a lifting and lowering device is physically incapable of urging the drawer with the front panel attached to the drawer to swivel relative to the drawer rail about the swiveling axis, as recited in amended independent claim 18. On the contrary, as noted above, cam 39 of Delmege can only swivel on its own axis to push the ball bearing cages apart, and the examiner's rendition of Fig. 2 of Delmege purporting to show swiveling of the slide 29 is physically impossible as the slide can only move in a straight line along slotted holes 34.

Regarding Hiers:

- Instead of the lifting and lowering device located between the drawer and the drawer rail, as recited in claim 18, Heir discloses an adjustable roller 30 located between the drawer rail 24 and the cabinet rail 12. drawer locking mechanism
- Instead of the lifting and lowering element urging the drawer with the front panel attached to the drawer to swivel relative to the drawer rail about the swiveling axis in response to movement of the lifting and lowering element between predetermined first and second positions of the lifting and lowering element relative to the drawer, as recited in claim 18, according to Hiers, moving the drawer rail roller 30 up or down raises or lowers the back end of the drawer rail 23, and the drawer fastened to the drawer rail, that in turn swivels both the drawer rail and the drawer relative to the cabinet rail 12 about the swivel axis (i.e., cabinet rail roller 22). Likewise, it is patently, physically impossible for the drawer of Hiers to swivel relative to the drawer rail.

Consequently, neither Delmege nor Hiers, separately or in combination with one another, recite the required combination of limitations of amended independent claims 1 and 16 or new claim 18. Because each and every element as set forth in amended independent claims 1 or 16 or in new claim 18 is not found, either expressly or inherently in Delmege or Hiers, the Examiner has failed to establish the required *prima facie* case of unpatentability. See Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628 (Fed. Cir. 1987); See also MPEP §2131. The Examiner has failed to establish the required *prima facie* case of unpatentability for independent claims 1, 16, and/ or 18 and similarly has failed to establish a *prima facie* case of unpatentability for claims 6-15 that depend on claim 1 and which recite further specific elements that have no reasonable correspondence with the references.

#### ***Allowable Subject Matter***

The Examiner's statement that claims 4-15 and 17 would be allowable if rewritten to include all the limitations of the base claim and any intervening claims is noted and

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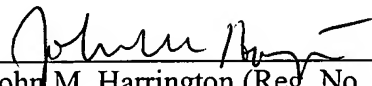
appreciated. However, the foregoing amendment and remarks are believed to overcome the rejection and clearly distinguish over the references applied by the Examiner.

### Conclusion

In view of the foregoing amendment and these remarks, each of the claims remaining in the application is in condition for immediate allowance. Accordingly, the examiner is requested to reconsider and withdraw the rejection and to pass the application to issue. The examiner is respectfully invited to telephone the undersigned at (336) 607-7318 to discuss any questions relating to the application.

Respectfully submitted,

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